

*Matter of S-I-K-* in support of its assertion that the bank fraud that was the object of the conspiracy charge against the Respondent was an offense that involved “fraud or deceit” where the *potential* loss to ABN AMRO bank exceeded \$10,000. 24 I&N Dec. at 327. The Court finds that the sentencing report provides clear and convincing evidence that, with respect to the conspiracy offense, and independent of the bank fraud offense, \$200,000 to \$350,000 was the *potential* loss to ABN AMRO. *See id.* Accordingly, the Court finds that the Respondent is convicted of an aggravated felony.

## **B. Relief**

The Respondent is ineligible for cancellation of removal pursuant to INA § 240A(a), as he has been convicted of an aggravated felony. *See* INA § 240A(a) (precluding relief under that section for aggravated felons). Similarly, because the Respondent was convicted of an aggravated felony following his admission to the United States as a lawful permanent resident, he is ineligible for a waiver of inadmissibility under INA § 212(h). *See* INA § 212(h)(2).

The Court further finds that the Respondent is ineligible for a waiver of inadmissibility pursuant to former INA § 212(c) because he did not enter a plea agreement in his criminal trial in 1994, but rather pled not guilty and went to trial. *See Dias v. INS*, 311 F.3d 456 (1<sup>st</sup> Cir. 2002) (relying on *INS v. St. Cyr*, 533 U.S. 289 (2001) in holding that where an alien is convicted following a trial, 212(c) relief is not available to that alien); *see also Nadal-Ginard v. Holder*, 558 F.3d 61 (1<sup>st</sup> Cir. 2007 (same holding, and specifically not reaching issue of whether an “objective potential reliance standard” is appropriate for determining whether 212(c) relief should apply retroactively); *see also* 8 C.F.R. § 1212.3(h). Based on this First Circuit precedent, because the Respondent went to trial, and notwithstanding the letter from his prior counsel written after his trial indicating his intended reliance on 212(c) relief, he is not eligible for such relief. *See id.*

**IV. ORDER**

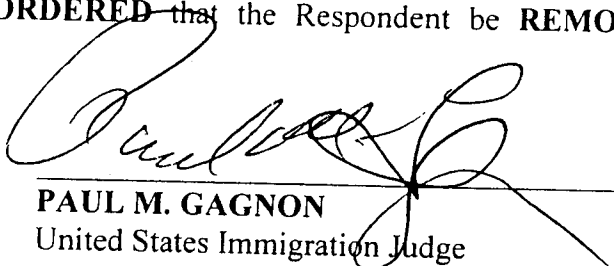
**IT HEREBY ORDERED** that the Respondent's application for Cancellation of Removal under section 240A(a) of the Act is **PRETERMITTED**.

**IT IS HEREBY FURTHER ORDERED** that the Respondent's application for a Waiver of Inadmissibility under Former section 212(c) of the Act is **PRETERMITTED**.

**IT IS HEREBY ORDERED** that the Respondent's application for a Waiver of Inadmissibility under section 212(h) of the Act is **PRETERMITTED**.

**IT IS HEREBY FURTHER ORDERED** that the Respondent be **REMOVED** to **AUSTRALIA**.

*May 4, 2010*  
Date

  
**PAUL M. GAGNON**  
United States Immigration Judge

UNITED STATES IMMIGRATION COURT  
JFK FEDERAL BLDG., ROOM 320  
BOSTON, MA 02203

IN THE REMOVAL CASE OF

Alien # 041-623-010

Alien Name: MARTIGNONI, JAMES PHILIP  
RESPONDENT

ORDERS

This is a memorandum of the Court's Decision and Orders entered on **May 4, 2010.**

This memorandum is solely for the convenience of the parties.

The oral or written Findings, Decision and Orders is the official opinion in this case.

( ) Both parties waived issuance of a formal oral decision in the case.

- ☐ The respondent was ordered REMOVED from the United States to \_\_\_\_\_ ( ) in absentia.
- ☐ Respondent's application for VOLUNTARY DEPARTURE was DENIED and respondent was ordered removed to \_\_\_\_\_, in the alternative to \_\_\_\_\_.
- ☐ Respondent's application for VOLUNTARY DEPARTURE was GRANTED until \_\_\_\_\_, upon posting a voluntary departure bond in the amount of \$ \_\_\_\_\_ to DHS within five business days from the date of this Order, with an alternate Order of removal to \_\_\_\_\_ or \_\_\_\_\_. Respondent shall present to DHS within ( ) thirty days ( ) sixty days from the date of this Order, all necessary travel documents for voluntary departure.
- ☐ Respondent's application for ASYLUM was  
( ) granted ( ) denied ( ) withdrawn with prejudice.  
( ) subject to the ANNUAL CAP under the INA section 207(a)(5).  
( ) Respondent knowingly filed a FRIVOLOUS asylum application.
- ☐ Respondent's application for WITHHOLDING of removal under INA section 241(b)(3) was  
( ) granted ( ) denied ( ) withdrawn with prejudice.
- ☐ Respondent's application for WITHHOLDING of removal under the Torture Convention was  
( ) granted ( ) denied ( ) withdrawn with prejudice.
- ☐ Respondent's application for DEFERRAL of removal under the Torture Convention was  
( ) granted ( ) denied ( ) withdrawn with prejudice.
- ☐ Respondent's application for CANCELLATION of removal under section ( ) 203(b) of NACARA, ( ) 240A(a) ( ) 240A(b)(1) ( ) 240A(b)(2) of the INA, was  
( ) granted ( ) denied ( ) withdrawn with prejudice.  
If granted, it was ordered that the DHS issue all appropriate documents necessary to give effect to this Order.  
Respondent ( ) is ( ) is not subject to the ANNUAL CAP under INA section 240A(e).
- ☐ Respondent's application for a WAIVER under the INA section \_\_\_\_\_ was  
( ) granted ( ) denied ( ) withdrawn or ( ) other \_\_\_\_\_.  
( ) The conditions imposed by INA section 216 on the respondent's permanent resident status were removed.
- ☐ Respondent's application for ADJUSTMENT of status under section \_\_\_\_\_ of the  
( ) INA ( ) NACARA ( ) \_\_\_\_\_ was  
( ) granted ( ) denied ( ) withdrawn with prejudice.  
( ) granted on a conditional basis under § 216 of the INA.  
If granted, it was ordered that DHS issue all appropriate documents necessary to give effect to this Order.

Alien Number: 041-623-010

Alien Name: MARTIGNONI, JAMES PHILIP

- ☐ Respondent's status was RESCINDED pursuant to the INA section 246.
- ☐ Respondent's motion to WITHDRAW his application for admission was ( ) granted ( ) denied. If the respondent fails to abide by any of the conditions directed by the district director of DHS, then the alternate order of removal shall become immediately effective without further notice or proceedings: the respondent shall be removed from the United States to \_\_\_\_\_.
- ☐ Respondent was ADMITTED as a \_\_\_\_\_ until \_\_\_\_\_ As a condition of admission, the respondent was ordered to post a \$ \_\_\_\_\_ bond.
- ☐ Case was ( ) TERMINATED ( ) with ( ) without prejudice ( ) ADMINISTRATIVELY CLOSED.
- ☐ Respondent was orally advised of the LIMITATION on discretionary relief and consequences for failure to depart as ordered.
- ☐ If you fail to voluntarily depart when and as required, you shall be subject to civil money penalty of at least \$1,000, but not more than \$5,000, and be ineligible for a period of 10 years for any further relief under INA sections 240A, 240B, 245, and 248 (INA Section 240B(d)).
- ☐ If you are under a final order of removal, and if you willfully fail or refuse to 1) depart when and as required, 2) make timely application in good faith for any documents necessary for departure, or 3) present yourself for removal at the time and place required, or, if you conspire to or take any action designed to prevent or hamper your departure, you shall be subject to civil money penalty of up to \$500 for each day under such violation. (INA section 274D(a)). If you are removable pursuant to INA 237(a), then you shall further be fined and/or imprisoned for up to 10 years. (INA section 243(a)(1)).
- ☐ Other: \_\_\_\_\_

  
 PAUL M. GAGNON, Immigration Judge

Date: May 4, 2010

APPEAL: WAIVED -- RESERVED

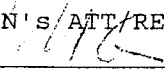
BY: RESPONDENT -- DHS -- BOTH

DUE BY: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**CERTIFICATE OF SERVICE**

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☐ ALIEN's ATT/REP ☐ DHS

DATE: May 4, 2010 BY: ☐ COURT STAFF ☐ JUDGE 

Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other

Y2

## **EXHIBIT B**

11 8 1 mrtg

1297

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

92 Cr. 1097

5 JAMES MARTIGNONI,

Jury Trial

6 Defendant.

7 -----x

8

November 8, 1993  
10:30 a.m.

9

Before:

10

HON. JOHN F. KEENAN,

11

District Judge

12

13

14

15

APPEARANCES

16

MARY JO WHITE

17

United States Attorney for the  
Southern District of New York

18

ALAN J. BRUDNER

Assistant United States Attorney

19

20

PAUL WARE,

JACQUELINE SCOTT CORLEY,

21

Attorneys for Defendant

22

23

24

25

1           While that testimony is significant, the  
2       government's case does not depend on Phil Mastrandrea. He  
3       is one piece of the puzzle, a significant piece but just  
4       one. There are also many others that prove the allegations  
5       in this case beyond a reasonable doubt.

6           I am going to ask you now to just step back with  
7       me a little bit into this chronology to when Mr. Martignoni  
8       joined ABN AMRO bank. Mr. Guarino said he interviewed Mr.  
9       Martignoni more than once. They discussed trading  
10      philosophies, what Mr. Martignoni's job would be, and in  
11      general terms his salary and bonus. Salary was to be based  
12      on his level of expertise, and his bonus was to be based on  
13      total revenues for the year. In very general terms. It was  
14      not a sticky point of negotiation, but it was discussed  
15      right at the beginning. And the bonus was not going to be a  
16      fixed percentage of Mr. Martignoni's profitability but,  
17      according to Mr. Guarino, around 5 to 12 percent or in that  
18      range of Mr. Martignoni's returns. So they had a general  
19      discussion.

20           Note that the bank at the end of the year, based  
21      on the documents you have seen and the testimony you have  
22      heard, believed that Mr. Martignoni's net profits were  
23      around \$4 million before all of this was found out, and his  
24      bonus of \$200,000 would be 5 percent of that. And recall  
25      that Mr. Guarino told you that he was prepared to go higher,

11 8 1 mrtg

Summation - Mr. Brudner

1312

1 somewhere in the range of 400,000 or more. So the bonus  
2 that was discussed with Mr. Martignoni in October or  
3 November 1991 was right in line with what Mr. Guarino tells  
4 you he had discussed before Mr. Martignoni joined the bank.

5           Toward the end of the year, October/November, Mr.  
6 Martignoni knew the exact amount of what his raise would be  
7 and what his bonus was expected to be, and he knew all along  
8 that they were generally tied to his performance. Common  
9 sense would tell you that Mr. Martignoni knew as well, not  
10 necessarily in a dollar-for-dollar sense, that his  
11 compensation would be tied to his financial performance.  
12 That is hardly a secret among traders with securities on  
13 Wall Street type jobs. Mr. Martignoni, while he had been in  
14 Boston and worked for bankers in Australia, was in the  
15 industry and would certainly have had some idea of what  
16 compensation is based on. That is just not a secret. And  
17 it was specifically discussed.

18           Now, Mr. Martignoni had reasons, in addition to  
19 simply salary and bonus, for wanting his profitability to  
20 appear higher than it was. The substance of what Mr.  
21 Guarino told you was that Mr. Martignoni was considered a  
22 rising star. He was an excellent trader. Mr. Martignoni  
23 would have received the biggest bonus on the desk if he  
24 wanted, much more, in fact, than a much more senior trader,  
25 Victor Polce. Mr. Guarino's star was rising along with



## EXHIBIT C

11 8 1 mrtg

1297

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

2 -----X

3 UNITED STATES OF AMERICA,

4 v.

92 Cr. 1097

5 JAMES MARTIGNONI,

Jury Trial

6 Defendant.

7 -----X

8 November 8, 1993  
10:30 a.m.

9  
10 Before:

11 HON. JOHN F. KEENAN,

12 District Judge

13

14

15

16

APPEARANCES

17

MARY JO WHITE  
United States Attorney for the  
Southern District of New York  
18 ALAN J. BRUDNER  
Assistant United States Attorney

19

20 PAUL WARE,  
JACQUELINE SCOTT CORLEY,  
21 Attorneys for Defendant

22

23

24

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11/8t2mtg

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Mr. Brudner - summation

1 according to Kristen Burch, and he told Kristen Burch, don't  
2 tell anybody because people can lose their jobs over this.

3 Now, all of this doesn't matter, and if all of  
4 this only affects unrealized profit and loss, why would  
5 anybody lose their jobs over it, and why would  
6 Mr. Martignoni make a comment like that? It doesn't make  
7 any sense, and the reason it doesn't is because, based on  
8 the evidence before you, I think you can see that it is just  
9 not true.

10 Unlike what Mr. Martignoni was causing to be  
11 reported to the bank, unlike the theory that he gave Michael  
12 Geslak, James Martignoni knew full well that his portfolio  
13 contained multi-million dollar losses if the options were  
14 valued in a more reasonable fashion than what he was doing  
15 on FENICS and submitting to the back office.

16 And for that reason, come November, Mr.  
17 Martignoni knew that he couldn't fully carry out Michael  
18 Guarino's corrective to lighten his book. The loss is like  
19 having something, a ball, let's say, underneath a blanket.  
20 You pat it down in one place and it has to come up somewhere  
21 else. It doesn't disappear. So when Mr. Martignoni was  
22 told get rid of the risk, square your book, you are leaving  
23 for a month, we don't want a lot of risk on the book,  
24 Mr. Martignoni took another step in his fraud to hide that  
25 ball under the blanket. He knew that the bank was looking

## EXHIBIT D

10 27 1mart

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1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
2 -----x

3 UNITED STATES OF AMERICA,

4 v.

92 Cr. 1097 (JFK)

5 JAMES MARTIGNONI,

6 Defendant.

7 -----x

8 October 27, 1993  
9 10:40 a.m.

10 Before:

11 HON. JOHN F. KEENAN,

12 District Judge

13 APPEARANCES

14 MARY JO WHITE  
United States Attorney for the  
Southern District of New York  
15 ALAN J. BRUDNER  
Assistant United States Attorney

16 PAUL WARE,  
17 JACQUELINE SCOTT CORLEY,  
Attorneys for Defendant  
18

19

20

21

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10 27 1mart

Burch - cross

302

1 Q. The bank hasn't lost any dollars in the sense  
2 that we might think of it, the bank hasn't paid out that  
3 unrealized loss; isn't that correct?

4 A. No, it hasn't.

5 Q. When you testified regarding the Bankers Trust  
6 decimal points that you moved, it is clear, is it not, that  
7 you moved -- well, you initially made a mistake, didn't you?

8 A. Yes.

9 Q. On the first Bankers Trust option, you  
10 accidentally moved the decimal point one place causing the  
11 premium that the bank was taking in to look larger; isn't  
12 that right?

13 A. Yes.

14 Q. You then deliberately changed five other premiums  
15 on successive Bankers Trust options; is that correct?

16 A. Yes.

17 Q. At the time those things occurred, James was in  
18 Amsterdam; is that right?

19 A. Yes.

20 Q. And he had no knowledge of what you did until  
21 sometime after those were completed and you told him on the  
22 telephone, isn't that correct?

23 A. It was all my idea.

24 Q. Even at the time, however, that you made these  
25 deliberate changes of decimal points on the premiums to the

## EXHIBIT E

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

3 UNITED STATES OF AMERICA,

4 v.

5 JAMES MARTIGNONI,

6 Defendant.  
7 -----x

92 Cr. 1097 JFK

JUN 25 1994

March 15, 1994  
9:02 a.m.

11 Before:

12  
13 HON. JOHN F. KEENAN,

District Judge

15  
16 ~~APPEARANCES~~

17 MARY JO WHITE,  
18 United States Attorney for the  
19 Southern District of New York  
20 ALAN J. BRUDNER,  
21 Assistant United States Attorney

22 GOODWIN, PROCTER & HOAR  
23 Attorney for defendant  
24 BY: PAUL F. WARE, JR., Esq.  
25 JACQUELINE SCOTT CORLEY, Esq.  
Of counsel

26 ALSO PRESENT:  
27 EDWARD SAKS, Special Agent F.B.I.  
28 GEORGE ELLIS, U.S.P.O.

SOUTHERN DISTRICT REPORTERS (212) 791-1020  
JEROME A. HARRISON



1           In my view, not only in this case, but in any  
2     case, sentencing is the most important function of a federal  
3     judge. In this case, it is uniquely important. Having  
4     enhanced the base offense level of 6 by the eight levels for  
5     the loss noted above, the court further increases the  
6     offense level by two points because there was -- I am  
7     quoting from the section -- "more than minimal planning  
8     involved in the offense," and I am referring to Section  
9     2F1.1(b), Subdivision 2, of the guidelines.

10           Further, under Section 3B1.3, the further  
11    enhancement for abuse of trust is appropriate. This final  
12    two-point enhancement takes us to a level of 18, with a  
13    criminal history category of 1. The scope for punishment,  
14    thus, under the guidelines is 27 to 33 months.

15           The court is persuaded that Section 5K2.10 of the  
16    guidelines does apply in this case because I believe that  
17    ABN-AMRO, by its wrongful conduct, contributed significantly  
18    to the offense behavior here. The bank did not train  
19    Mr. Martignoni, and when he sought help by asking Mr. Geslak  
20    be transferred to the options desk, he didn't receive any  
21    help.

22           Further, the bank failed to follow its own policy  
23    or the federal recommendations concerning the options  
24    trading.

25           On top of all of that, I received the letter

## EXHIBIT F

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA,

4 v.

92 Cr. 1097 (JFK)

5 JAMES MARTIGNONI,

6 Defendant.

7 -----x

8

October 27, 1993  
10:40 a.m.

9

Before:

10

HON. JOHN F. KEENAN,

11

District Judge

12

APPEARANCES

13

14 MARY JO WHITE  
United States Attorney for the  
Southern District of New York

15

ALAN J. BRUDNER  
Assistant United States Attorney

16

17 PAUL WARE,  
JACQUELINE SCOTT CORLEY,  
Attorneys for Defendant

18

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Burch - cross

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1 solve it; through no fault of your own, you simply weren't  
2 able to solve it; isn't that right?

3 A. Yes, I guess that would be right.

4 Q. You felt lousy, you were panicked about the  
5 situation; isn't that correct?

6 A. Uh-huh.

7 Q. And the decisions you made were in the context --

8 THE COURT: Uh-huh means yes?

9 THE WITNESS: I am sorry; yes.

10 THE COURT: And the decisions you made --

11 BY MR. WARE:

12 Q. Were in the context of that panic and illness; is  
13 that correct?

14 A. Yes.

15 Q. As of December 3, 1991, you certainly didn't  
16 believe that you had done anything illegal, did you?

17 A. No, I didn't think I did anything illegal.

18 Q. And as of December 4 and, for that matter, long  
19 after you had left the bank, you didn't believe had you done  
20 anything illegal; did you?

21 A. No.

22 Q. Because at no time had you had any intention to  
23 victimize the bank or to steal anything or to do anything  
24 but to stall for your boss to get back to the United States;  
25 isn't that correct?

1 A. Yes.

2 Q. On December 3, 1991 you simply didn't believe you  
3 had done anything wrong; isn't that correct?

4 A. I didn't think I did anything illegal.

5 Q. Do you recall testifying on another occasion, and  
6 I am not going to say what that occasion was and you should  
7 not say either, but do you recall testifying under oath on  
8 another occasion in this courtroom before Judge Keenan in  
9 May 1993?

10 A. Yes.

11 Q. Do you recall being asked this question and  
12 giving this answer:

13 "Q. Is your testimony as of December 3, 1991  
14 you did not believe you had done anything wrong; is that  
15 correct?

16 "A. That is correct."

17 Do you recall having said that?

18 A. Vaguely.

19 MR. WARE: May I show the witness the transcript,  
20 your Honor?

21 THE COURT: You may.

22 MR. WARE: May I have the court's permission to  
23 ask a couple of questions from here, your Honor?

24 THE COURT: You may.

25 BY MR. WARE:



1 Did you say that?

2 A. Again, since it appears there I must have said  
3 it.

4 Q. In any event, you would agree that at no time  
5 until long after these events did you view anything you had  
6 done as illegal, isn't that correct?

7 A. No, I didn't think I did anything illegal.

8 Q. The first time it occurred to you that some kind  
9 of crime had been committed as opposed to your simply trying  
10 to buy some time to get your boss back to the United States  
11 to figure out a problem was some months later when the  
12 prosecution, in effect, told you you committed a crime; is  
13 that correct?

14 MR. BRUDNER: Objection.

15 THE COURT: Objection overruled.

16 THE WITNESS: Well, it was the prosecution and my  
17 attorney. They both said that I had done something illegal.  
18 BY MR. WARE:

19 Q. Before these outside people said to you, you have  
20 done something that was illegal, you didn't believe anything  
21 you had done was illegal; is that right?

22 A. That's right.

23 Q. Throughout these events so far as you are  
24 concerned you never had any intention to do anything  
25 illegal; isn't that right?

1 A. That's right.

2 Q. You never had any intention to come to any  
3 agreement, tacit, explicit or otherwise, with Mr. Martignoni  
4 to do anything illegal; isn't that correct?

5 A. Had I known it was illegal I wouldn't have done  
6 it.

7 Q. But the point is you had no understanding at any  
8 point during these events that anything you were doing was  
9 illegal; isn't that right?

10 A. That's right.

11 Q. So your intentions were never to do anything  
12 illegal, correct?

13 A. Right.

14 (Continued on next page)

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## EXHIBIT G



4

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA,

4 v.

92 Cr. 1097 (JFK)

5 JAMES MARTIGNONI,

6 Defendant.

7 -----x

8 October 27, 1993  
9 10:40 a.m.

10 Before:

11 HON. JOHN F. KEENAN,

District Judge

12 APPEARANCES

13 MARY JO WHITE  
14 United States Attorney for the  
Southern District of New York  
15 ALAN J. BRUDNER  
Assistant United States Attorney

16 PAUL WARE,  
17 JACQUELINE SCOTT CORLEY,  
Attorneys for Defendant

18  
19  
20  
21  
22  
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24  
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1 Bankers Trust options, you had no intent at that time, did  
2 you, to harm ABN?

3 A. No.

4 Q. You had no intent to defraud the bank, you had no  
5 intent to steal any money, you had no intent in cahoots with  
6 Mr. Martignoni to victimize the bank in any way whatsoever,  
7 even when you did those decimal points, isn't that correct?

8 MR. BRUDNER: Objection to the term, defraud.

9 THE COURT: The question is bad as to form  
10 because of something else in it.

11 Sustained.

12 BY MR. WARE:

13 Q. At the time you moved the decimal points in the  
14 Bankers Trust premiums, you had no intention at that time to  
15 victimize the bank, did you?

16 A. No.

17 Q. Your sole intention at that time was to buy time,  
18 isn't that correct?

19 A. Yes.

20 Q. Throughout December 3 and December 4 your sole  
21 intention in whatever you did in terms of changing different  
22 parameters in FENICS or your conversation with Ms. Melendez  
23 was to stall and to buy time, isn't that correct?

24 A. Yes.

25 Q. The purpose of the buying time was not so that

1 In fact, you say on the tape, this is all going  
2 to be fixed tomorrow, don't worry about it; isn't that  
3 right?

4 A. Yeah.

5 Q. Your purpose in talking to Ms. Melendez again was  
6 not so that you could carry out some plan with James to  
7 steal anything from the bank or even to mislead the bank  
8 over time; it was simply to buy another day until he could  
9 get back to the United States; isn't that correct?

10 A. Yeah, I just wanted to buy time.

11 Q. You had no intention in talking with Ms. Melendez  
12 that the bank would actually lose money on that transaction,  
13 did you?

14 A. I didn't want anything to get paid out wrong, no.

15 Q. The reason you didn't want anything to be paid  
16 out wrong is because you specifically did not intend that  
17 the bank be harmed financially from any of this; isn't that  
18 right?

19 A. I didn't want anyone to be harmed.

20 Q. But, those intentions on your part included the  
21 fact that you didn't want the bank to be harmed either; did  
22 you?

23 A. No.

24 Q. So, again, the effort with Ms. Melendez was a  
25 time-buying effort, a stalling effort, isn't that correct?

## EXHIBIT H

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

92 Cr. 1097

5 JAMES MARTIGNONI,

6 Defendant.

7 -----x  
8 October 20, 1993  
10:45 a.m.

9 Before:

10 HON. JOHN F. KEENAN,

11 District Judge

12 APPEARANCES

13 MARY JO WHITE

14 United States Attorney for the  
Southern District of New York

15 ALAN J. BRUDNER

Assistant United States Attorney

16 PAUL WARE,

17 CERISE LIM-EPSTEIN,  
Attorney for Defendants



1 This is a case about fraud. It is not about a  
2 fraud to obtain money or a car or jewelry. It is about a  
3 fraud relating to something that you cannot see or touch.  
4 It is something intangible and it's something that the law  
5 recognizes as the intangible right to honest services. You  
6 will recognize it as just plain trust.

7 The case is about the kind of trust that a  
8 business in this case ABN AMR bank, which is a large Dutch  
9 bank with an office in New York, and some of its officers,  
10 placed in every one of its employees to perform a honest  
11 job, the kind of trust that should allow a businesslike bank  
12 to operate knowing that it's receiving accurate information  
13 about what is happening with its money.

14 Ladies and gentlemen, the evidence in this case,  
15 the government expects, will show you that the defendant,  
16 James Martignoni, the gentleman sitting at the end of this  
17 table, abused the fundamental trust placed in him by  
18 ABN-AMRO bank where he worked as a foreign exchange options  
19 trader.

20 You will learn during this trial that he and his  
21 trading assistant, a woman named Kristen Burch falsified  
22 records, changed numbers, and tried to get another person  
23 working at the bank in the bank's back office to lie on  
24 their behalf, all for the purpose of misleading their  
25 superiors at the bank.

## EXHIBIT I

11 8 1 mrtg

1297

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----X

4 UNITED STATES OF AMERICA,

5 v.

92 Cr. 1097

6 JAMES MARTIGNONI,

Jury Trial

7 Defendant.

8 -----X

9 November 8, 1993  
10 10:30 a.m.

11 Before:

HON. JOHN F. KEENAN,

District Judge

12

13

14

15

APPEARANCES

16

MARY JO WHITE  
United States Attorney for the  
Southern District of New York  
ALAN J. BRUDNER  
Assistant United States Attorney

17

18

PAUL WARE,  
JACQUELINE SCOTT CORLEY,  
Attorneys for Defendant

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11 8 1 mrtg

Summation - Mr. Brudner

1303

1           That is what is wrong here, too, ladies and  
2 gentlemen. The defense, as the judge told you at the  
3 beginning and will tell you again, has absolutely no burden.  
4 The defense does not have to prove anything. But Mr. Ware  
5 has proven something to you. He has proven that ABN AMRO  
6 left its door unlocked, and the issue in this case is  
7 whether or not somebody, Mr. Martignoni in this case, came  
8 along and took advantage of it. Maybe ABN AMRO could have  
9 prevented this loss or stopped this crime from occurring.  
10 But leaving the door unlocked doesn't excuse the crime.

11           In this case the crime alleged is filing false  
12 records and scheming to defraud ABN AMRO by Mr. Martignoni  
13 and Ms. Burch, lying to the bank, and depriving it of its  
14 right to expect Mr. Martignoni to act honestly. For  
15 \$110,000 a year and an approved bonus of 200,000 or more  
16 that he could have gotten renegotiated, ABN at least had the  
17 right to expect Mr. Martignoni to act honestly.

18           You will hear from Judge Keenan at the end of  
19 this case that as a bank in this case, a foreign bank with a  
20 branch on United States soil, certain of our laws protect it  
21 so that depositors, borrowers, and other people who deal  
22 with the bank can hope to obtain accurate information in  
23 their dealings with the bank. That is why we are here and  
24 that is what this case is about, not ABN's lack of  
25 accounting controls or failures to abide by some of its own

## EXHIBIT J

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA,

4 v.

92 Cr. 1097 JFK

5 JAMES MARTIGNONI,

6 Defendant.

JUN 25 1994

7 -----x

8

9

March 15, 1994  
9:02 a.m.

10

11

Before:

12

HON. JOHN F. KEENAN,

13

District Judge

14

15

~~APPEARANCES~~

16

17 MARY JO WHITE,  
18 United States Attorney for the  
19 Southern District of New York  
ALAN J. BRUDNER,  
Assistant United States Attorney

20

21 GOODWIN, PROCTER & HOAR  
Attorney for defendant  
22 BY: PAUL F. WARE, JR., Esq.  
JACQUELINE SCOTT CORLEY, Esq.  
23 Of counsel

24

ALSO PRESENT:

25 EDWARD SAKS, Special Agent F.B.I.  
GEORGE ELLIS, U.S.P.O.

SOUTHERN DISTRICT REPORTERS (212) 791-1020  
JEROME A. HARRISON

1                   The objection to Paragraph 58 of the presentence  
2     report is sustained.

3                   The court believes that an 8-level enhancement  
4     for sentence purposes which takes into account  
5     Mr. Martignoni's salary and bonus of an amount between  
6     200,000 and 350,000 is the appropriate loss to be recognized  
7     and calculated in this case for guideline purposes; and,  
8     thus, I grant an enhancement from the initial criminal  
9     category Level 6 of eight points, to at that stage a level  
10    14.

11                  I further sustain the objection to Paragraph 62  
12     of the presentence report. I do not believe that there  
13     should be an enhancement for role in the offense. I don't  
14     think that's appropriate in this case, and I decline to  
15     grant it.

16                  The 11 objections in Part C of the report, at  
17     Paragraphs 75, 76, 78, 89, 90, 92, 93, 94, 95, 97 and 98 are  
18     sustained, and it is my understanding the probation report  
19     has been corrected to reflect those changes.

20                  I reject the Probation Department's calculation  
21     of the offense level and will set forth my final calculation  
22     shortly. The observations by the defense concerning  
23     Paragraphs 108 and 113 of the presentence report I will  
24     cover shortly. All of the other defense objections to the  
25     presentence report are overruled.